

IN THE MATTER OF:)
)
Michael Jason Rutherford) Docket No. 12.4-11287A
860 Chapman Hollow Road)
Lawrenceburg, TN 38464)
)

March 30th, 2011

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1 (Whereupon, the following proceedings
2 commenced at 11:24 a.m. as follows:)

3 THE COURT: All right. This hearing is now
4 convened before the Tennessee Board for Licensing
5 Contractors to consider the case of Michael Jason
6 Rutherford, Docket Number 12.14-111287A. My name is
7 Randall LaFevor. I have been assigned by the secretary
8 of state to preside at this hearing as the
9 administrative judge. In that capacity, I will make
10 all rulings regarding the order of proceedings,
11 admissibility of evidence, and questions of law
12 pursuant to the provisions of the Tennessee
13 Administrative Act. I will not participate in the
14 findings of fact or ultimate decision of the board.
15 Those decisions will be made by the board.

16 In today's proceeding the state is
17 represented by Ms. Jenny Gray, assistant general
18 counsel for the Tennessee Department of Commerce and
19 Insurance. Once again, as in the previous hearing, it
20 appears that the respondent is not present, and there
21 has been no communication received by my office
22 indicating that anybody represents him or was planning
23 to attend this hearing today. Once again, for the
24 purpose of the record in this hearing, I will ask the
25 board members who are present and deliberating to

1 introduce themselves.

2 MR. HAYES: Jerry Hayes, Paris.

3 MR. BRODD: Mark Brodd, Knoxville.

4 MR. WHITTINGTON: Keith Whittington, Johnson
5 City.

6 MR. SMITH: Reese Smith, Franklin.

7 MR. MASON: Bill Mason, Greenbriar.

8 THE COURT: Thank you, gentlemen. And do any
9 of you have any outside information concerning the case
10 of Michael Jason Rutherford?

11 (No response.)

12 THE COURT: There is an indication that there
13 is nobody that has outside knowledge, so I will
14 indicate at this point what the items involved in the
15 technical record are. There is a notice of hearing and
16 charges filed on February 14th, 2011, a prehearing
17 order that I assigned and entered on February 25th,
18 2011. The state filed its list of witnesses and
19 exhibits on March 17th, 2011, and made a correction to
20 that by a document entered -- or submitted, rather, on
21 March 23rd, 2011. All those documents are a part of
22 the technical record as we begin the hearing.

23 All right. Ms. Gray, would you like to
24 either summarize the charges, read the notice of
25 charges, or submit a copy of the notice to the board

1 members at this time?

2 MS. GRAY: Yes, Your Honor. Should I make a
3 motion to hold the respondent in default at this time?

4 THE COURT: You can do that if you want to
5 present that first.

6 MS. GRAY: Okay. I have the notice of
7 hearing and charges here.

8 THE COURT: Board members, the notice that's
9 being distributed, obviously, is the state's
10 identification of the issues before you today. This is
11 not evidence, but it's a sort of outline of what the
12 state will be proving during its case.

13 All right. Gentlemen, let me just note again
14 for the record that this hearing was scheduled to begin
15 at 9:00 a.m. It is now almost 11:30 a.m. No one has
16 responded on behalf of the respondent, and the state's
17 counsel at this time has a motion.

18 MS. GRAY: I would like to make a motion that
19 the respondent be held in default pursuant to Tennessee
20 Code Annotated 4-5-309 and moved to make the certified
21 mail receipt signed by the respondent part of the
22 evidence as Exhibit 1.

23 THE COURT: All right. Do you have copies
24 for the board?

25 MS. GRAY: Yes.

1 THE COURT: Distribute those. I will mark
2 and enter the original submitted here as
3 Exhibit Number 1.

4 (Whereupon, the previously mentioned document
5 was marked as Exhibit No. 1.)

6 THE COURT: Gentleman, I will note for the
7 record that what you have received is a copy of a green
8 card or return receipt card signed by
9 Michael Rutherford on 2/22/11, which is more than 30
10 days prior to today's date, the date of the hearing,
11 which complies with proper service. And having
12 provided proper notice to the respondent, who has
13 failed to appear, the state has made a motion to find
14 him in default and proceed in a default hearing. And
15 if the board would like to take up that motion at this
16 time, I will turn it over to the chairman.

17 MR. SMITH: I would make a motion immediately
18 that we accept the findings of our counsel and move for
19 a default judgment.

20 MR. WHITTINGTON: I have a motion. Do I have
21 a second?

22 MR. HAYES: Second.

23 MR. WHITTINGTON: Any discussion?

24 (No response.)

25 MR. WHITTINGTON: All in favor, say aye.

1 THE BOARD: Aye.

2 MR. WHITTINGTON: Opposed likewise.

3 (No response.)

4 MR. WHITTINGTON: Motion carries.

5 THE COURT: Thank you, gentlemen. Since the
6 state has the burden of proof in this matter, the state
7 will be required to put on evidence to establish this
8 case, even though the respondent has failed to appear.
9 So, Ms. Gray, if you would like to address the board
10 either with an opening statement or proceed into your
11 proof.

12 MS. GRAY: A short opening statement. This
13 matter today involves a licensee, specifically a
14 limited electrical licensee, who was convicted of two
15 felonies during his period of licensure, and the two
16 felonies being possession of a firearm during
17 commission of a felony and promotion of methamphetamine
18 manufacturing.

19 And I submit to the board that you are
20 charged with protecting the public's health, safety,
21 and welfare, and that you are also authorized by
22 statute to revoke a license based on any felony
23 conviction, and that these specifically pose a threat
24 to the safety and welfare of the citizens of Tennessee.
25 And the state will ask at the close of proof to

1 authorize a revocation of the respondent's license.

2 That's all I have at this time.

3 THE COURT: Thank you, Ms. Gray. And you may
4 proceed with you proof.

5 MS. GRAY: At this time I would like to call
6 Carolyn Lazenby as my first witness.

7 THE COURT: Ms. Lazenby, you were placed
8 under oath in a previous hearing. That remains in
9 effect.

10 CAROLYN LAZENBY,
11 was called as a witness, having been previously duly
12 sworn, testified as follows:

13 EXAMINATION

14 QUESTIONS BY MS. GRAY:

15 Q. Can you please state your name.

16 A. Yes. Carolyn Lazenby.

17 Q. And what is your job title?

18 A. I'm the executive director of the board for
19 licensing contractors.

20 Q. And are you the custodian of records for the
21 board?

22 A. Yes.

23 Q. And is the respondent, Mr. Michael Jason
24 Rutherford, licensed currently by the board?

25 A. Yes.

1 Q. And when was he issued the license?

2 A. The license renewal was issued on
3 November 17th, 2010, and he expires 11/30/2012.

4 Q. And what is the current status of his
5 license?

6 A. Active. I'm sorry. It's been suspended.

7 Q. And why was the license suspended?

8 A. A summary suspension hearing was conducted
9 and the board voted then to take immediate action.

10 MS. GRAY: I think that's all I have for
11 Ms. Lazenby.

12 THE COURT: All right. Are there any
13 questions from the board members for Ms. Lazenby?

14 (No response.)

15 THE COURT: All right. If not, then,
16 Ms. Gray.

17 MS. GRAY: May I ask one more question of
18 Ms. Lazenby?

19 THE COURT: Sure.

20 BY MS. GRAY:

21 Q. Can you state for the record Mr. Rutherford's
22 license number.

23 A. Yes. It's license number 57345.

24 MS. GRAY: Thank you. That's all,
25 Your Honor.

1 THE COURT: All right. Ms. Gray, you may
2 proceed with the rest of your proof.

3 MS. GRAY: I would like to submit at this
4 time a copy of the -- a certified copy of the
5 convictions of the respondent as self-authenticating
6 documents as Exhibit 2.

7 THE COURT: All right. What I'm going to do
8 is mark the originals of these documents. There are
9 four pages. It will be marked as Collective Exhibit 2,
10 and it may be circulated to the board at this time.

11 Board members, I will note for your benefit
12 that these are self-authenticating documents, meaning
13 that they may be considered as evidence as though a
14 witness had appeared here and presented them and
15 testified and answered any questions that you may have
16 had with respect to those documents.

17 (Whereupon, the previously mentioned
18 documents were marked as Collective Exhibit No. 2.)

19 THE COURT: If any board member has a
20 question about these documents, you may address those
21 to counsel. If not, we'll proceed.

22 (No response.)

23 THE COURT: All right. Ms. Gray.

24 MS. GRAY: The state has no further proof at
25 this time, Your Honor.

1 THE COURT: All right. Would you like to
2 summarize your proof?

3 MS. GRAY: Yes, Your Honor. As I said in the
4 opening, I would request that the board revoke the
5 respondent's license based on these felony convictions
6 and also want to remind the board that you may assess
7 civil penalties between \$50 to \$1,000 for each
8 violation and also reasonable cost of the prosecution
9 and disciplinary action itself. So I request that the
10 board assess the cost of this matter, along with
11 revocation. That's all I have for closing.

12 THE COURT: All right. Prior to beginning
13 your deliberations, do any of you have any questions
14 you would like to address to counsel?

15 MR. MASON: How much is cost?

16 MS. GRAY: I do not have an exact figure.
17 Your Honor, may I discuss with my...

18 THE COURT: You may. It may be cleared up if
19 I just address the board and tell you that if you
20 choose to assess cost, all you have to say is that you
21 are assessing cost. It will be computed and assessed
22 at a later date. Any other questions for counsel?

23 MR. BRODD: Is this person in jail?

24 MS. GRAY: I don't believe so. I think --

25 MR. SMITH: This looked like probation on

1 here on the fine print.

2 MS. GRAY: I think it was possibly 90 days he
3 may have served. I do think this was originally a bit
4 higher charges, and then according to the plea
5 agreement he was given a little lesser sentence than
6 normal. And I believe it was 90 days to be served
7 concurrently.

8 MR. BRODD: He signed the return receipt, so
9 I guess he was not in jail that day.

10 THE COURT: All right.

11 MS. GRAY: Looks like it was entered October
12 5th, so it may have gone in on that day.

13 THE COURT: Gentlemen, if there are no other
14 questions, then I will proceed directly into charging
15 the board as to your responsibilities. And since I
16 have already done that previously, I will briefly touch
17 on the issues that need to be addressed.

18 First, your standard of proof is a
19 preponderance of the evidence. You must restrict your
20 inquiries specifically to the charges that were alleged
21 by the state, base your decision on the evidence that
22 you have received, which consists of the testimony of
23 Ms. Lazenby and the certified copy of the conviction on
24 counts one and four of the indictment.

25 You also, in making your decision today, must

1 include findings of fact, conclusions of law, and
2 decisions with respect to a disciplinary action and a
3 policy reason for your decision or determination. All
4 your deliberations must be in public, and at this point
5 I'll turn the deliberations over to your chairman.

6 And let me ask, do you have proposed findings
7 and conclusions?

8 MS. GRAY: Yes, Your Honor.

9 THE COURT: If you'll submit those to the
10 board to assist them in making their decision.

11 MR. WHITTINGTON: Okay, board. I think
12 everyone understands the proposed findings of facts.
13 You are looking at them.

14 MR. BRODD: I make a motion we accept the
15 proposed findings of fact.

16 MR. HAYES: Second.

17 MR. WHITTINGTON: I have got a motion and a
18 second. Any discussion?

19 (No response.)

20 MR. WHITTINGTON: All in favor, say aye.

21 THE BOARD: Aye.

22 MR. WHITTINGTON: Opposed likewise.

23 (No response.)

24 MR. BRODD: I make a motion we accept the
25 proposed conclusions of law.

1 MR. HAYES: Second.

2 MR. WHITTINGTON: I have got a motion and a
3 second. Is there any discussion?

4 (No response.)

5 MR. WHITTINGTON: All in favor, say aye.

6 THE BOARD: Aye.

7 MR. WHITTINGTON: Opposed likewise.

8 (No response.)

9 MR. WHITTINGTON: The motion carries. Now,
10 we are into the penalty phase. We have to decide
11 whether or not we want to -- the first thing I want to
12 remind board members is, we should assess cost. Let's
13 do not overlook that on this one. Do we want a
14 penalty -- monetary penalty? Do we want revocation? I
15 think we are already in the suspension stage.

16 MR. MASON: I think we do want revocation,
17 and I will repeat what was said at the suspension
18 hearing. The nature of this offense is
19 methamphetamine, that methamphetamine is associated
20 with violent behavior. He was carrying and was
21 convicted of unlawful possession of a firearm in
22 committing this crime.

23 It is associated with stealing to support a
24 drug habit. It is associated with environmental
25 dangers, a health hazard not only to whoever uses it,

1 but anyone even in the proximity of it. And it is, of
2 course, a question of judgment and trust that this
3 person operating with a license from this state is
4 going to people's homes or on their property, is, I
5 think, forfeited by getting convicted of these crimes.

6 I can't -- I believe that we would be
7 irresponsible to sanction exposing the public as
8 individuals or their property or their outbuildings to
9 someone who's been convicted of this kind of crime
10 because of its very nature. And the fact that they're
11 felonies in and of themselves, you know, meets the
12 standards that we have already found under conclusions
13 of law. So I think that, as a matter of policy, we
14 are -- need to protect the public by revoking the
15 license. That would be my discussion of that.

16 MR. WHITTINGTON: I think that will make a
17 wonderful policy statement. I think revocation at
18 minimum. I'm not sure that a civil penalty is going to
19 do us any good.

20 MR. SMITH: He paid \$2,000, was fined that by
21 Maury County. I agree.

22 MR. BRODD: I agree.

23 MR. WHITTINGTON: Can I get a motion?

24 MR. BRODD: I move we assess court costs and
25 immediately revoke his license.

1 MR. WHITTINGTON: And a \$2,000 penalty?

2 MR. BRODD: No.

3 MR. WHITTINGTON: No? Okay. I have got a
4 motion.

5 MR. SMITH: Second.

6 MR. WHITTINGTON: I've got a second. Any
7 discussion?

8 (No response.)

9 MR. WHITTINGTON: All in favor, say aye.

10 THE BOARD: Aye.

11 MR. WHITTINGTON: Opposed likewise.

12 (No response.)

13 MR. WHITTINGTON: The motion carries. Can we
14 allow that previous statement as a policy statement or
15 does that need to be made at this time?

16 THE COURT: Can you incorporate what he said
17 or do you want him to restate the policy statement?

18 MS. GRAY: Yes, Your Honor.

19 THE COURT: You want him to restate it?

20 MS. GRAY: No. I can incorporate it.

21 MR. WHITTINGTON: I couldn't have said it
22 any -- there's no way I can top that.

23 THE COURT: All right. Then there has been
24 findings of fact, conclusions of law, a penalty
25 assessed, and a policy statement enunciated. Anything

1 else we need to address before we adjourn?

2 MR. WHITTINGTON: Nope.

3 THE COURT: If not, then I thank everybody
4 for your time, and, Ms. Gray, you will prepare the
5 order for the board's consideration.

6 MS. GRAY: Yes, Your Honor.

7 THE COURT: Thank you. We are adjourned.

8 MR. WHITTINGTON: Thank you, Your Honor. And
9 with that I will adjourn the March meeting of the
10 Tennessee Board for Licensing Contractors. We will see
11 you in Memphis in May. Everybody make plans.

12 (End of proceedings, 11:46 a.m.)

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State of Tennessee)
)
County of Davidson)

I, Brittany Temples, Court Reporter, with
offices in Nashville, Tennessee, hereby certify that I
reported the foregoing proceeding by machine shorthand
to the best of my skills and abilities, and thereafter
the same was reduced to typewritten form by me.

I further certify that I am not related to
any of the parties named herein, nor their counsel, and
have no interest, financial or otherwise, in the
outcome of the proceedings.

Brittany Temples, LCR #099
Notary Public
State of Tennessee

My Commission Expires 5/25/2014

